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alleges that Cosola benefitted from this contract because he is the owner of the property that was improved by the contract. (Comp. ¶¶ 6,7, ECF No. 1.)

The plaintiff did not automatically refute his own allegations by attaching the written agreement to his Complaint. While the written agreement is relevant evidence of the alleged contract's terms, that written document does not necessarily control those terms because it was never executed. Cosola is free to argue during later stages of the case that the writing evidences that he was not a party to the contract, but at this early stage, the writing does not provide an appropriate basis for dismissal.

Cosola also asks me to dismiss the plaintiff's claim for "bad faith breach," but that claim has already been dismissed against all of the defendants.

For the foregoing reasons, it is **ORDERED** that defendant Cosola's Motion to Dismiss (ECF No. 42) is DENIED.

DATED: June 8, 2016

/s/ James P. Jones

United States District Judge